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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,589	12/04/2003	Matthew P. Carter	10000/218	8981
757 7590 08/13/2009 BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				
EXAMINER				
TYSON, MELANIE RUANO				
ART UNIT		PAPER NUMBER		
3773				
MAIL DATE		DELIVERY MODE		
08/13/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/728,589

**Applicant(s)**

CARTER ET AL.

**Examiner**

MELANIE TYSON

**Art Unit**

3773

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24-32 and 37-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-32 and 37-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to the applicant's amendment received 04 May 2009. Claims 1-23 and 33-36 remain cancelled. New claims 38 and 39 have been added. The amendments made to the claims do not place the application in condition for allowance for the reasons set forth below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 24-26, 27, 29, and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vardi et al. (U.S. Publication No. 2001/0003161 A1) in view of Colgan et al.**

Vardi discloses a method of placing first and second stents into a bifurcation using a stent delivery device (see entire document) comprising the steps of providing a first introducer (12) having a first distal portion (11) with a first distal outer diameter and a first stent (25) and a first proximal portion (elongated portion) having a first proximal outer diameter that is less than the first distal outer diameter (for example, see Figure 2), providing a second introducer (20) having a second distal portion (13) with a second distal outer diameter and a second stent (40) and a second proximal portion (elongated portion) having a second proximal outer diameter that is less than the second distal diameter (for example, see Figure 2), placing the first and second introducers in a staggered adjacent configuration, wherein the first proximal portion is adjacent to the second distal portion such that an overall diameter of the first and second introducers is less than the sum of the first distal outer diameter and the second distal outer diameter (for example, see Figure 2), placing a first (21) and second (31) wire guide in an adjacent configuration external to and independent of the stents into a main lumen and first and second branch lumens (for example, see Figure 5; the distal tips of the wire guides are external to the stents), subsequently independently advancing the first and second introducers over the first and second wire guides such that the first introducer is positioned within the main lumen and first branch lumen and the second introducer is positioned within the main lumen and the second branch lumen (in that the main lumen branches to either the left or straight, thus the straight portion at the branching section is considered a first branch and the left portion is considered a second branch as claimed;

for example, see Figure 6), withdrawing first (15) and second (14) introducers, and sequentially deploying the first and second stents (for example, see Figures 6 and 7).

Vardi fails to disclose the step of placing the staggered, adjacent, introducers (for example, see Figure 2) in a working channel of an endoscope. Colgan discloses a method of deploying a stent (see entire document). Colgan teaches the step of placing an introducer retaining a stent in a working channel of an endoscope (70; for example, see paragraphs 87 and 91). It would have been obvious to one having ordinary skill in the art at the time the invention was made to place Vardi's introducers in a working channel of an endoscope as taught by Colgan. Doing so would enable the operator to locate stent placement through direct vision (for example, see paragraph 87).

**Claims 28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vardi et al. in view of Colgan et al. and Shaknovich (U.S. Patent No. 5,669,924).**

Vardi in view of Colgan discloses the claimed invention (see rejection above for a description of the same limitations recited in claim 30) except for the step of simultaneously deploying the first and second stents within the bifurcation such that at least at least a portion of the first stent is in a side-by-side configuration with at least a portion of the proximal portion of the second stent within the main lumen.

Shaknovich discloses a method of placing first (6b) and second (6a) stents in a bifurcation (for example, see Figure 9). Shaknovich teaches the step of simultaneously deploying the first and second stents within the bifurcation such that at least at least a portion of the first stent is in a side-by-side configuration with at least a portion of the

proximal portion of the second stent within the main lumen (for example, see column 8, lines 17-22). It is well within the general knowledge of one having ordinary skill in the art to combine prior art elements to yield predictable results. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to perform the step of simultaneously deploying the first and second stents within the bifurcation such that at least a portion of the first stent is in a side-by-side configuration with at least a portion of the proximal portion of the second stent within the main lumen in Vardi's in view of Colgan's method as taught by Shakhovich, utilizing Shakhovich's stents. Doing so would reduce the number of steps to complete the procedure, in turn facilitating the procedure. With further respect to claim 31, access to the second branch remains open as the first stent is positioned within the first branch lumen and main lumen in that the second stent is positioned within the second branch and main lumen prior to deployment of both stents (i.e., the stents are expanded simultaneously, and open access is provided around the deflated balloons).

### ***Response to Arguments***

Applicant's arguments with respect to Hilaire et al. and amended claims 24, 25, and 37-39 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 04 May 2009 regarding Vardi have been fully considered but they are not persuasive. The applicant argues primarily that Vardi fails to disclose the second wire guide is advanceable external to and independent of the first stent. However, Figure 5 illustrates the second wire guide (31) is advanced external to (through side opening 27) and independent of the first stent (25). Therefore, it is the

examiner's position that the second wire guide is advanceable external to independent of the first stent as recited in the claims.

The applicant's argument that Colgan and Shacknovich fail to teach or suggest placing first and second introducers in a staggered, adjacent, configuration, is moot, since it is the examiner's position that Vardi discloses such a step.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE TYSON whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Friday 7-7 (max flex).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./  
Examiner, Art Unit 3773  
August 10, 2009

/(Jackie) Tan-Uyen T. Ho/  
Supervisory Patent Examiner, Art Unit 3773